

## **Assembly Committee on Elections and Campaign Reform**

### **2009 Assembly Bill 646**

Testimony of Kevin J. Kennedy  
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Government Accountability Board  
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Chairperson Smith and Committee Members:

Thank you for the opportunity to appear before this committee and testify regarding Assembly Bill 646. The Government Accountability Board supports this legislation. On May 5, 2009 by a unanimous vote, the Government Accountability Board decided to recommend that the Legislature amend §7.23, Wis. Stats., in the fashion provided in this legislation.

Assembly Bill 646 revises §7.23, Wis. Stats., to allow clearing and reactivation of detachable recording units and compartments for use with tabulating equipment 14 days after a primary for state and local elections and 21 days after any other state or local election, subject to retention for purposes of a recount or election contest. Current law requires the transfer of the election data from detachable recording units and compartments to an electronic medium, which may not be erased or destroyed for 22 months after an election regardless of whether the election was federal, state, or local. While there is a federal requirement to retain all election data from federal elections for 22 months, there is no similar sound reason to require the same for state and local elections.

The costs of maintaining the electronic data from federal elections for 22 months is significant; however, there is a compelling purpose for doing so, namely the requirements of 42 U.S.C. §1974. Without a corresponding compelling purpose for preserving state and local electronic election data for 22 months, the Board recommends that a shorter period of retention is warranted. This shorter period will be embraced by clerks due to the avoidance of significant additional costs for retention of electronic election data for state and local elections.

Currently, in a two year election cycle, there could be as many as 2 primaries, 2 generals, and a presidential preference primary. Excluding recounts and special elections, of which there are dozens and predominately state and local elections, clerks would need at least 5 sets of recording devices in order to maintain all election data on the device for the requisite 22 month period. Manufacturers and vendors of the equipment do not have the supplies necessary to meet this demand. While the current statute provides for transferring the data to another recording medium, those costs are prohibitive and can range from \$50-\$100 per voting equipment unit per election. Municipalities are subject to the Federal mandate to preserve electronic data from federal elections for 22 months

and must bear the cost to do so. However, there is no compelling reason to require the same for state and local elections.

Assembly Bill 646 allows clerks to reuse the recording devices for consecutive elections, while at the same time preserving election materials for recounts or election contests should they occur. This practice is consistent with the procedures of other states with respect to election materials from state and local elections. In addition, many municipalities have optical scan voting equipment that was acquired in the 1990s and with much of this older equipment, the supply of extra detachable memory devices is not available, even if the municipalities could afford the cost.

Other than the purpose of preserving election materials for recounts or election contests, there is no additional state or local purpose to preserve election materials beyond the time of a recount or election contest. There is no need to preserve election materials for state and local elections for the 22 months required for federal elections.

Section 7.23, Wis Stats., and its federal counterpart are designed to preserve the data necessary to verify all votes were counted as intended by the voter and to preserve evidence to investigate any wrongdoing in the conduct of an election. This legislation preserves these goals without imposing significant costs on local election officials or requiring local election officials to meet a standard that is not possible given the limited number of available memory devices.

On behalf of the Government Accountability Board, I appreciate your consideration of these issues with regard to this bill and will answer any questions you may have at this time.

Thank you.

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